

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 98-294-C - ORDER NO. 1999-140

FEBRUARY 19, 1999

IN RE: Application of United Telephone Company of) ORDER RULING
the Carolinas for Approval of Administrative) ON GUIDELINES
Guidelines to Supplement United's Price)
Regulation Plan.)

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I. INTRODUCTION

This matter came before the Public Service Commission of South Carolina (the Commission) upon Application of United Telephone Company of the Carolinas (United) by letter dated June 5, 1998 seeking approval of certain Administrative Guidelines to supplement United's Price Regulation Plan under S.C. Code §58-9-576(B).

By letter dated August 29, 1997, United notified this Commission of United's election to have rates, terms, and conditions for regulated services determined pursuant to the statutory Price Regulation Plan set forth in S.C. Code §58-9-576 (B). Pursuant to the notification, this Commission recognized United as a price regulated company in South Carolina effective September 29, 1997, and United has operated as a price regulated company since that date.

On June 5, 1998, United requested approval by this Commission of Administrative Guidelines (including complaint procedures) to supplement the statutory Price Regulation Plan (referred to above) that United has operated under since September 29, 1997. In this proceeding United is only seeking approval of the Administrative

Guidelines and Complaint Procedures filed June 5, 1998. United is not seeking reconfirmation of its status as a price regulated company in this proceeding, and it is not the purpose of this proceeding to reconsider or reevaluate United's status as a price regulated company. United's status as a price regulated company under S.C. Code §58-9-576 (A) is not an issue in this Docket.

A hearing was held on October 29, 1998 at 10:30 AM at the offices of the Commission, with the Honorable Philip T. Bradley, Chairman, presiding. United was represented by William Frederick Austin, Esquire and Robert Carl Voigt, Esquire. United presented the testimony of C. Steve Parrott. The Consumer Advocate for the State of South Carolina (the Consumer Advocate) was represented by Elliott F. Elam, Jr., Esquire. The Consumer Advocate did not present any witnesses. The Commission Staff was represented by F. David Butler, General Counsel. The Commission Staff did not present any witnesses.

At the conclusion of the hearing, the Consumer Advocate requested to file a Brief, and United requested to file a Proposed Order. In response to a request from the Consumer Advocate, United filed three Late-Filed Exhibits on November 3, 1998, which were collectively designated as Hearing Exhibit No. 2.

Based upon the entire record in this proceeding, and after considering the Briefs and Proposed Orders submitted by the parties, the Commission now makes the following Findings of Fact/Conclusions of Law:

FINDING OF FACT/CONCLUSION OF LAW NO. 1

The Applicant is a price regulated company, and has operated under the statutory Price Regulation Plan set forth in S.C. Code §58-9-576 (B) since September 29, 1997.

EVIDENCE FOR FINDING OF FACT/CONCLUSION OF LAW NO. 1

As stated above, it is not the purpose of this proceeding to reconsider or reevaluate United's status as a price regulated company, and United's status as a price regulated company under S.C. Code §58-9-576(A) is not an issue in this Docket. The Consumer Advocate argued in his brief that while United had qualified for price regulation, it failed to meet the terms of South Carolina Code Ann. §58-9-576 (A) since the Company did not have an approved "local interconnection" agreement as set forth in the statute. Although agreements existed in August, 1997 between United and 360 Communications and United and Tel-Link, the Consumer Advocate argued that these agreements represent a Commercial Mobile Radio Services (CMRS) agreement and a "resale" agreement, respectively. The Consumer Advocate further argued that these agreements are not "local interconnection" agreements and, therefore, the effective date for United's price regulation plan should be April 12, 1998. The Commission finds that these arguments raised by the Consumer Advocate in its brief are beyond the scope of this proceeding since the purpose of this proceeding is to consider the guidelines under which the Price Regulation Plan for United will be administered as required by §58-9-576 (B). As of this date, this Commission has not decided the question of what constitutes an interconnection agreement and it is not necessary to do so in this proceeding.

Further, there is no need for the Commission to address whether United was price regulated on September 29, 1997 since the Consumer Advocate conceded in its brief that the question of the effective date is of no relevance in this proceeding. The tariffs filed

by United between September 29, 1997 and April 12, 1998 had no customer impact or did not require rate increases. The Commission finds that the Administrative Guidelines filed by United are approved.

It is appropriate to summarize the evidence presented by United in this proceeding confirming United's status as a price regulated company in order to lay a proper foundation for, and to make clear the relevance of, Findings of Fact/Conclusions of Law No.'s 2 and 3, below. For that reason, the Commission cites the following evidence in the record of this proceeding relating to United's status as a price regulated company; The Applicant's witness, C. Steve Parrott, testified that by letter dated August 29, 1997, United notified the Commission that United elected to have rates, terms and conditions for regulated services determined pursuant to the statutory Price Regulation Plan set forth in S. C. Code §58-9-576 (B), with such election to be effective September 29, 1997. (Transcript; Page 15, Lines 2-21). A copy of the August 29, 1997 letter was attached to the Applicant's Price Regulation Plan filed June 5, 1998. Witness Parrott also testified that subsequent to the September 29, 1997 effective date of the Applicant's election to adopt the statutory Price Regulation Plan, the Applicant has made several Tariff filings which have been implemented in accordance with the statutory Price Regulation Plan. (Transcript; p Page 23, Line 1 – Page 24, Line 3). These filings include revisions to the Applicant's *General Subscriber Services Tariff* effective November 18, 1997 and January 19, 1998, and a Toll Restructuring Proposal effective September 29, 1998. In response to a request from the Consumer Advocate, the Applicant filed copies of these Tariffs as Late-Filed Exhibits in this proceeding. Witness Parrott also testified

that at the time United elected to adopt the statutory Price Regulation Plan, United had at least two local interconnection agreements with entities not affiliated with United which had been approved by this Commission in satisfaction of the requirement set forth in S.C. Code §58-9-576 (A) for a local exchange company to elect price regulation. (Transcript; Page 18, Lines 2-6.) Finally, under Rules R.103-870 C. and R.103-871 A., the Commission takes judicial notice of internal Commission documents recognizing United as a price regulated company, which includes a memo dated September 3, 1997 notifying all Commissioners of United's election to implement price regulation in lieu of traditional rate-of-return regulation.

FINDING OF FACT/CONCLUSION OF LAW NO. 2

The Applicant is a "small local exchange carrier" or "small LEC" as defined in S.C. Code §58-9-10 (14), and a "rural telephone company" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. §153 (37).

EVIDENCE FOR FINDING OF FACT/CONCLUSION OF LAW NO. 2

The Applicant's witness, C. Steve Parrott, testified that United is a "small local exchange carrier" or "small LEC" as defined in S.C. Code §58-8-10 (14), and a "rural telephone company" as defined in the federal Telecommunications Act of 1996, 47 U.S.C. §153 (a) (47). (Transcript; Page 13, Line 20 – Page 15, Line 1.) Witness Parrott testified that in order to be recognized as a "rural telephone company" under the federal Act, a company must meet at least one of five criteria set forth in the Act. (Transcript; Page 14, Lines 3 – 5.) The five criteria set forth in §153 (a) (47) of the Act are:
“(A) provides common carrier service to any local exchange carrier study area that does not include either...

- (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
 - (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.”

As stated in Section 1 of United’s Price Regulation Plan filed June 5, 1998, United submitted a “self-certification” letter in accordance with FCC guidelines articulated in Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Report and Order, FCC 97-157 (rel. May 8, 1997), pages 168-169, ¶310. In the “self-certification” letter, United demonstrated that it meets two of the criteria required for “rural telephone company” status under the federal Act. (Transcript; Page 11, Lines 7 – 21.) Specifically, United’s service territory does not overlap onto an urbanized area as determined by the United States Census Bureau [criterion (A) (ii), referred to above], and United serves fewer than 100,000 access lines [criterion (C), referred to above]. A copy of the self-certification letter is attached to United’s June 5, 1998 Price Regulation Plan filing as “Exhibit 3.” By meeting the federal definition for a “rural telephone company,” United also meets the definition of a “small LEC” under the South Carolina statute. (Transcript;

Page 14, Line 3 – Page 15, Line 1.) This Commission has recognized United as a rural telephone company in the recent Universal Service Fund proceeding (Docket No. 97-239-C) (Transcript; Page 11, Lines 21 – 23), and in the payphone deregulation dockets (Docket No.'s 97-079-C and 97-080-C, Order No. 98-817). No evidence was offered or entered into the record of this proceeding in opposition to the Applicant's evidence concerning its status as a "small LEC" under South Carolina law, and as a "rural telephone company" under the federal Act.

FINDING OF FACT/CONCLUSION OF LAW NO. 3

The Administrative Guidelines incorporated within the Price Regulation Plan filed by the Applicant on June 5, 1998 are consistent with the statutory Price Regulation Plan set forth in S. C. Code §58-9-576 (B), and include adequate provisions to ensure that any Tariff filings or other actions taken by the Applicant under price regulation are in the public interest.

EVIDENCE FOR FINDING OF FACT/CONCLUSION OF LAW NO. 3

The Applicant's witness, C. Steve Parrott, testified that United's filing on June 5, 1998 reinforces and supplements the statutory Price Regulation Plan that United has operated under since September 29, 1997. (Transcript; Page 10, Lines 4 – 8.) Section 3 of United's Plan, entitled "Filing and Review of Tariffs," mirrors S.C. Code §58-9-576 (B) (6). Also, Section 3 of United's Plan offers substance and detail to the otherwise undefined "complaint process" referred to in S. C. Code §58-9-576 (B) (5). (Transcript; Page 10, Line 4 – 12.) As witness Parrott testified, United's complaint process language is taken directly from the Commission's Order No. 96-19, where the Commission approved such a provision for purposes of BellSouth's Consumer Price Protection Plan. (Transcript; Page 10, Lines 14 – 21.) Witness Parrott testified that United considers this

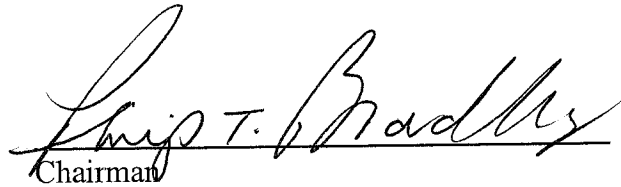
complaint process (currently in use by BellSouth) as a fair process that promotes and protects the public interest. Witness Parrott emphasized that United fully recognizes and agrees that Tariff filings and other actions taken by United under price regulation are subject to review by the Commission under the complaint process to comply with the public interest standard. (Transcript; Page 16, Line 1 – Page 17, Line 11.) No evidence was offered or entered into the record of this proceeding in opposition to the Applicant's evidence showing that United's Price Regulation Plan is fully consistent with the statutory Plan that United has operated under since September 29, 1997, and that United's Plan includes adequate provisions to ensure that any Tariff filings or other actions taken by United under price regulation are consistent with the public interest.

IT IS THEREFORE ORDERED:

1. That the Applicant's proposed Administrative Guidelines pertaining to the filing and review of tariffs and reporting requirements filed June 5, 1998 are approved as filed; and
2. That the Applicant's proposed Administrative Guidelines filed June 5, 1998 shall, as of the date of this Order, supplement and constitute an amendment to the Applicant's statutory Price Regulation Plan under S. C. Code §58-9-576(B);

3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)